

35A Am. Jur. 2d Fish, Game, and Wildlife Conservation III C Refs.

American Jurisprudence, Second Edition | May 2021 Update

Fish, Game, and Wildlife Conservation
Karl Oakes, J.D.

III. State and Local Regulation of Hunting and Fishing

C. Scope of State Regulation

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35A Am. Jur. 2d Fish, Game, and Wildlife Conservation § 39

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Fish, Game, and Wildlife Conservation
Karl Oakes, J.D.

III. State and Local Regulation of Hunting and Fishing

C. Scope of State Regulation

1. In General

§ 39. Scope of state regulation of hunting and fishing, generally

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West's Key Number Digest

West's Key Number Digest, **Fish** 8 to 10

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The police power of a state to regulate the manner and taking of animal life may extend beyond game to any sort of animal, wild or domestic.¹ The right of the state, in the exercise of its police power, to regulate and control the taking of fish in all the public waters within its jurisdiction is a right so universally recognized and so uniformly affirmed, by both text-writers and courts, that it may not now be questioned.² Under the state's police power to preserve and regulate an important resource, which gives it authority over wild game,³ the state may prohibit the killing of certain game for any purpose, or, if it permits the killing of such game, may allow it for one purpose and forbid it for another.⁴ Accordingly, an emergency regulation regarding the fall caribou hunt was capable of standing on its own absent an invalid participatory component, where the remainder of the regulation allowed every Alaskan to take one caribou from a herd during the fall hunting season until 2,000 caribou had been taken.⁵

The state may also allow taking under special circumstances subject to special conditions in particular areas as opposed to other areas,⁶ and may adopt procedures for granting some persons licenses or permits and not others, as well as for revocation and denial of hunting or fishing privileges.⁷

Observation:

The failure to advise a holder of a shellfish digger's permit that he had the right to counsel in revocation proceedings did not deprive him of due process inasmuch as the right to counsel was conferred by an administrative regulation and was not guaranteed by the constitutional right to due process.⁸

The regulatory authority of the state may extend to the promulgation of safety regulations such as requiring modern gun hunters to wear fluorescent orange clothing while hunting,⁹ as well as to laws intended to prohibit cruelty to domesticated animals and wild animals previously reduced to captivity.¹⁰ A regulation prohibiting the possession or collection of reptiles for commercial purposes does not improperly confer protected status on the statutorily unprotected reptiles where the regulation does not prohibit the hunting of unprotected reptiles, but merely hunting in order to sell the reptiles.¹¹

The state may prohibit the catching of fish within its waters, or if it allows the catching, it may regulate it by the imposition of such conditions, restrictions, and limitations as it deems needful or proper.¹² The taking and marketing of shellfish,¹³ including oysters under tidal waters as well as those under nontidal waters,¹⁴ is subject to governmental regulation to the same extent as is the taking and marketing of swimming fish. The protective power of the state extends also to animals not generally used for food as well as to nonedible fish.¹⁵

The regulatory power of the state extends to animals *ferae naturae* which are bred and raised in captivity.¹⁶ The police power of the state may be exercised to prevent trapping by cruel and inhuman means, even though such traps may be the only practical means a farmer has to protect his or her livestock, crops, or fruit trees from the depredations of wild animals.¹⁷

States can impose reasonable and nondiscriminatory regulations on an Indian tribe's treaty-based hunting, fishing, and gathering rights on state land when necessary for conservation.¹⁸

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Footnotes

¹ [State v. McAffry](#), 263 Kan. 521, 949 P.2d 1137 (1997).

² [Madison Street Fishery, LLC v. Zehringer](#), 2017-Ohio-992, 86 N.E.3d 914 (Ohio Ct. App. 6th Dist. Erie County 2017).

³ [Bailey v. Smith](#), 581 S.W.3d 374 (Tex. App. Austin 2019), review denied, (Oct. 2, 2020).

⁴ [Christy v. Hodel](#), 857 F.2d 1324 (9th Cir. 1988); [Opinion of the Justices](#), 128 N.H. 46, 509 A.2d 749 (1986).

⁵ [State v. Palmer](#), 882 P.2d 386 (Alaska 1994).

⁶ [Humane Soc. of U.S. v. County of Monroe](#), 192 A.D.2d 1139, 596 N.Y.S.2d 222 (4th Dep't 1993).

⁷ [Kodiak Seafood Processors Ass'n v. State](#), 900 P.2d 1191 (Alaska 1995); [Rose v. Board of Selectmen of Falmouth](#), 36 Mass. App. Ct. 34, 627 N.E.2d 478 (1994); [Petition of Snuffer](#), 193 W. Va. 412, 456 S.E.2d 493 (1995). In a statute providing for revocation of authorization to catch oysters if a person has "knowingly committed" a violation of oyster harvesting regulations, the term "knowingly" means deliberately or intentionally, and does not require proof that the licensee is subjectively aware that his or her act is unlawful. [Hayden v. Maryland Department of Natural Resources](#), 242 Md. App. 505, 215 A.3d 827 (2019).

⁸ [Stevenson v. Jorling](#), 201 A.D.2d 980, 607 N.Y.S.2d 836 (4th Dep't 1994). As to due process and equal protection, generally, see §§ 35, 36.

⁹ [R.S.B. v. State](#), 632 So. 2d 24 (Ala. Crim. App. 1993); [Armstrong v. State](#), 91 Wash. App. 530, 958 P.2d 1010 (Div. 2 1998).

¹⁰ [State v. Cleve](#), 1999-NMSC-017, 127 N.M. 240, 980 P.2d 23 (1999).

¹¹ [Nevada Dept. of Wildlife v. Bentz](#), 106 Nev. 294, 792 P.2d 28 (1990).

¹² [Miller v. McLaughlin](#), 281 U.S. 261, 50 S. Ct. 296, 74 L. Ed. 840 (1930).

¹³ [State v. Van Vlack](#), 101 Wash. 503, 172 P. 563 (1918) (abrogated on other grounds by, [Yim v. City of Seattle](#), 194

Wash. 2d 682, 451 P.3d 694 (2019)).

¹⁴ [Lee v. State of New Jersey](#), 207 U.S. 67, 28 S. Ct. 22, 52 L. Ed. 106 (1907).

¹⁵ [In re Schwartz](#), 119 La. 290, 44 So. 20 (1907).

¹⁶ § 41.

¹⁷ [Commonwealth v. Higgins](#), 277 Mass. 191, 178 N.E. 536, 79 A.L.R. 1304 (1931).

As to justification for the killing or trapping of game out of season to protect property, see § 38.

¹⁸ [Herrera v. Wyoming](#), 139 S. Ct. 1686, 203 L. Ed. 2d 846 (2019).

Indians' rights to hunt and fish, see [Am. Jur. 2d, Indians, Native Americans §§ 58 to 61](#); treaties with Indians, generally, see [Am. Jur. 2d, Indians, Native Americans §§ 48 to 51](#).

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III. State and Local Regulation of Hunting and Fishing

C. Scope of State Regulation

1. In General

§ 40. Scope of state regulation of hunting and fishing in private waters

[Topic Summary](#) [Correlation Table](#) [References](#)

West's Key Number Digest

West's Key Number Digest, **Fish** 8 to 10

West's Key Number Digest, **Game** 3.5 to 5

There is a distinction between fish and game as to the scope of regulations limiting their taking relative to private property, in that unlike game which is generally considered to not be the property of a landowner even though that game is on private property¹ fish found in wholly contained private waters such as ponds are considered the property of the owner of those waters and land.² Thus, while hunting regulations apply to the taking of game even within private property,³ the taking of fish from wholly private ponds is generally not subject to fishing regulations.⁴ However, where nonnavigable streams, lakes, or ponds are so connected with other waters of the state as to permit of the migration of fish, the state may, to preserve fish and in the interest of the public, regulate the manner of and prescribe the seasons for their taking, notwithstanding private ownership of the soil under such waters.⁵

Reminder:

While fishing regulations may not restrict fishing from private waters, provisions regulating transportation and sale may apply to fish taken from private property.⁶

1 § 1.

2 § 6.

3 § 39.

4 *Washburn v. State*, 90 Okla. Crim. 306, 213 P.2d 870, 15 A.L.R.2d 751 (1950).

5 *State v. Lowder*, 198 Ind. 234, 153 N.E. 399 (1926).

6 § 48.

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III. State and Local Regulation of Hunting and Fishing

C. Scope of State Regulation

1. In General

§ 41. Scope of state regulation of hunting of domesticated or captive game

[Topic Summary](#) [Correlation Table](#) [References](#)

West's Key Number Digest

West's Key Number Digest, [Fish](#) 8 to 10

West's Key Number Digest, [Game](#) 3.5 to 5

The state may, in the enactment of game laws for the protection of wild animals and as a means of preventing the evasion of such laws, extend its regulations to include game raised in captivity,¹ although game laws which are penal in character are not, as a general rule, construed to apply to domestic or captive game unless they are expressly or by necessary implication made applicable.²

While privately held animals kept in captivity are distinguished from wildlife or game, if they are released into the wild or allowed to roam away from captivity, and by nature they are wild, they may regain their status as an animal *ferae naturae*.³ Thus, while an unqualified property right in wild animals may arise when they are legally removed from their natural liberty and made subjects of man's dominion, that right is lost if the animal regains its natural liberty.⁴

Observation:

The Fish and Wildlife Service (FWS) regulation setting forth permit exceptions for captive-reared mallard ducks does not prohibit a state from regulating the raising, use, or transportation of captive-reared mallard ducks.⁵ Moreover, that portion of the FWS regulation which states that captive-reared mallard ducks may be acquired, possessed, or sold "without a permit" means without a permit from the Department of the Interior, and does not prohibit a state from requiring a permit for the possession and selling of captive-reared mallard ducks.⁶

A state game and fish commission's regulations concerning captive-reared mallard ducks, under which the commission revoked defendant's permits to raise ducks, were not preempted by migratory bird treaties, the United States entered into with Great Britain, Mexico, Japan and Russia, or the Migratory Bird Treaty Act giving effect to the treaty with Great Britain, as the treaties did not explicitly preempt state law from regulating migratory birds and did not purport to exclusively occupy the field of migratory bird regulation for propagating purposes or for private game farms, the treaties expressly provided that exceptions were

to be governed by other authorities, and the state's regulations were consistent with the treaties in that they provided additional protection for migratory birds.⁷

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Footnotes

¹ [State v. Pollock](#), 42 S.D. 360, 175 N.W. 557 (1919).

² [Schultz v. Morgan Sash & Door Co.](#), 1959 OK 149, 344 P.2d 253, 74 A.L.R.2d 967 (Okla. 1959).

³ [§ 2](#).

As to property rights in wild animals, generally, see [Am. Jur. 2d, Animals §§ 11 to 15](#).

⁴ [State v. Bartee](#), 894 S.W.2d 34 (Tex. App. San Antonio 1994).

⁵ [Noe v. Henderson](#), 373 F. Supp. 2d 939 (E.D. Ark. 2005), order aff'd, 456 F.3d 868 (8th Cir. 2006).

⁶ [Noe v. Henderson](#), 373 F. Supp. 2d 939 (E.D. Ark. 2005), order aff'd, 456 F.3d 868 (8th Cir. 2006).

⁷ [Noe v. State](#), 2011 Ark. App. 155, 381 S.W.3d 915 (2011).

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III. State and Local Regulation of Hunting and Fishing

C. Scope of State Regulation

1. In General

§ 42. Scope of state regulation of importation and exportation of fish and game; interstate commerce

[Topic Summary](#) [Correlation Table](#) [References](#)

West's Key Number Digest

West's Key Number Digest, [Commerce](#) 82.40

West's Key Number Digest, [Fish](#) 8 to 10

West's Key Number Digest, [Game](#) 3.5 to 5

Generally, regulations affecting the interstate transporting of game and fish must satisfy a legitimate state purpose which cannot be reasonably addressed by a nondiscriminatory purpose.¹ Thus, where the state has a special property interest in a natural resource, such as fish or wild game found therein, the state may prevent or regulate the export of fish or game even if interstate commerce is indirectly affected by the restriction.² Accordingly, a state statute restricting the processing of fish, the plain purpose of which is simply to conserve, for food, fish found within the waters of the state, does not contravene the Commerce Clause of the Federal Constitution, even though it also operates on the processing of fish brought into the state from outside.³ Also, where a statute prohibits the shipment of game out of the state, the delivery of game to a carrier for transportation to a point beyond the boundary of the state constitutes a violation of the statute, although the game, while still in the state, is taken from the carrier by a deputy game warden of the state under process of law.⁴

A state law that on its face discriminates against interstate commerce, and does not represent the least discriminatory alternative of the state to promote any legitimate local purpose in maintaining the ecological balance in state waters, may be found invalid and unenforceable.⁵ However, while a state has no authority to absolutely forbid the importation of fish from other states, it may, as a means for the effective enforcement of its own statutes, forbid the sale or possession of fish for sale within the state during a closed season, even though the effect of such legislation is to prohibit the sale of fish imported from other states.⁶

A statute which prohibits the importation of shrimp which have been harvested with commercial fishing technology that may harm sea turtles does not prohibit all importation of shrimp or shrimp products from countries that have not been certified as having taken adequate measures to protect sea turtles, and the government may by regulation permit the importation of individual shipments of shrimp or shrimp products from countries that have not been certified if the exporters represent that

the shipments in question were caught without the use of commercial fishing technology that may adversely affect species of turtles protected by domestic law.⁷

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Footnotes

¹ [Maine v. Taylor](#), 477 U.S. 131, 106 S. Ct. 2440, 91 L. Ed. 2d 110 (1986).

² [Ex parte Fritz](#), 86 Miss. 210, 38 So. 722 (1905).

³ [Bayside Fish Flour Co. v. Gentry](#), 297 U.S. 422, 56 S. Ct. 513, 80 L. Ed. 772 (1936).

⁴ [State v. Carson](#), 147 Iowa 561, 126 N.W. 698 (1910).

⁵ [Hughes v. Oklahoma](#), 441 U.S. 322, 99 S. Ct. 1727, 60 L. Ed. 2d 250 (1979).

⁶ [Bayside Fish Flour Co. v. Gentry](#), 297 U.S. 422, 56 S. Ct. 513, 80 L. Ed. 772 (1936).

⁷ [Turtle Island Restoration Network v. Evans](#), 284 F.3d 1282 (Fed. Cir. 2002).

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III. State and Local Regulation of Hunting and Fishing

C. Scope of State Regulation

2. Particular Regulation

§ 43. Scope of state regulation of fishing affecting waters

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West's Key Number Digest

West's Key Number Digest, **Fish** 8 to 10

West's Key Number Digest, **Game** 3.5 to 5

West's Key Number Digest, **States** 18.33

The regulatory power of a state extends not only to the taking of its fish, but also to matter affecting the state's fisheries including regulatory authority over the waters inhabited by the fish.¹ Under its police power, the state may regulate and prohibit obstructions in waters, including nonnavigable waters, the beds of which are owned by riparian owners, which tend to keep fish from their natural feeding or breeding grounds.²

The general rule is that persons who erect and maintain dams in streams, either navigable or nonnavigable, are under the implied obligation of providing fishways adequate to permit the free migration of fish; and should they fail to do so, the state, under its police power for the preservation of fish within its boundaries, may compel them to do so.³

A state's regulation of access to waterfowl in a game management zone was not subject to the Commerce Clause as a regulation of a channel of interstate commerce or an instrumentality thereof.⁴

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Footnotes

¹ [Columbia River Fishermen's Protective Union v. City of St. Helens](#), 160 Or. 654, 87 P.2d 195 (1939). As to wildlife conservation, generally, see §§ 60 to 70.

² [Baldwin v. Fish and Game Commission of Montana](#), 436 U.S. 371, 98 S. Ct. 1852, 56 L. Ed. 2d 354 (1978).

³ [State v. Meek](#), 112 Iowa 338, 84 N.W. 3 (1900).

⁴ Minnesota ex rel. Hatch v. Hoeven, 370 F. Supp. 2d 960 (D.N.D. 2005), judgment aff'd, 456 F.3d 826 (8th Cir. 2006).

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III. State and Local Regulation of Hunting and Fishing

C. Scope of State Regulation

2. Particular Regulation

§ 44. Scope of state power to require hunting and fishing licenses

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West's Key Number Digest

West's Key Number Digest, **Fish** 8 to 10

West's Key Number Digest, **Game** 3.5 to 5

A state may require persons wishing to take fish from waters or to hunt to procure a license to do so from the state,¹ and may make it a criminal act for a person to do so without such a license.² Licenses may also be required of persons engaged as guides in inland fisheries, as well as those engaged in the occupation of guiding hunters.³ A special license may be required for the use of a powerboat or sailboat in fishing.⁴

A license tax may be imposed on the business or occupation of those engaged in packing or canning fish or oysters, without being objectionable as a taking of private property for public use without compensation, and without depriving packers of their property without due process of law or denying them equal protection of the laws.⁵

Different fees may be imposed depending upon different conditions, such as the manner in which fish are to be taken or the means used for taking them.⁶ Larger fees may be imposed upon those who use larger boats or more efficient appliances without making an illegal discrimination,⁷ and a license tax imposed on fish canners may be graduated according to the size of the pack,⁸ or a greater license tax may be imposed upon those using certain fish other than for food than is imposed upon those who are processing fish for use as food.⁹

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Footnotes

¹ *Dapson v. Daly*, 257 Mass. 195, 153 N.E. 454, 49 A.L.R. 1496 (1926); *Tuttle v. Wood*, 35 S.W.2d 1061 (Tex. Civ. App. San Antonio 1930), writ refused, (July 22, 1931).

² *State v. White*, 2017 ME 219, 173 A.3d 544 (Me. 2017) (fishing); *Hayden v. Maryland Department of Natural Resources*, 242 Md. App. 505, 215 A.3d 827 (2019) ("relaying" oysters); *State v. Storms*, 2017-Ohio-8658, 101

N.E.3d 14 (Ohio Ct. App. 4th Dist. Gallia County 2017) (hunting deer).

³ [State v. Snowman, 94 Me. 99, 46 A. 815 \(1900\)](#).

⁴ [People v. Setunsky, 161 Mich. 624, 126 N.W. 844 \(1910\)](#).

⁵ [Leonard v. Earle, 279 U.S. 392, 49 S. Ct. 372, 73 L. Ed. 754 \(1929\)](#).

⁶ [Alaska Pacific Fisheries v. Territory of Alaska, 236 F. 52, 4 Alaska Fed. 432 \(C.C.A. 9th Cir. 1916\)](#).

⁷ [Toomer v. Witsell, 334 U.S. 385, 68 S. Ct. 1156, 92 L. Ed. 1460 \(1948\)](#) (a state may constitutionally graduate license fees according to the size of the fishing boats used).

⁸ [Pacific American Fisheries v. Territory of Alaska, 269 U.S. 269, 46 S. Ct. 110, 70 L. Ed. 270, 5 Alaska Fed. 285 \(1925\)](#).

⁹ [Alaska Fish Salting & By-Products Co v. Smith, 255 U.S. 44, 41 S. Ct. 219, 65 L. Ed. 489, 5 Alaska Fed. 20 \(1921\)](#).

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III. State and Local Regulation of Hunting and Fishing

C. Scope of State Regulation

2. Particular Regulation

§ 45. Scope of state power to regulate time of taking fish and game; closed seasons

[Topic Summary](#) [Correlation Table](#) [References](#)

West's Key Number Digest

West's Key Number Digest, **Fish** 8 to 10

West's Key Number Digest, **Game** 3.5 to 5

By virtue of its police power over the preservation of fish and game within its borders, a state may limit the taking of fish and game to certain seasons or periods of time during the year and declare a closed season for the remainder of the year.¹ In computing the period of open and closed seasons under a statute making it unlawful to hunt from a certain day to a certain day, the first-named day is, according to the common-law system of time computation, excluded, and the last, included.² As an aid to the enforcement of a statute creating a closed season, the legislature may forbid the possession or sale of the fish during the closed season.³

Observation:

A fish and game warden did not violate the Fourth Amendment in performing a vehicle stop of a motorist driving away from a pier where the warden had seen him fishing with a handline, to demand that the motorist display his catch, even though the stop was not at a fixed checkpoint, and even if the warden did not have a reasonable suspicion that the motorist possessed a spiny lobster during the closed season, where the warden returned the spiny lobster he discovered in the motorist's vehicle to the ocean; the intrusion upon the motorist's privacy resulting from the stop was not so significant as to outweigh the justification for the stop.⁴

The state may also restrict the taking of game to certain hours of the day and make it an offense to kill game during other hours.⁵

A statute forbidding the killing of certain animals during specified months should not be construed as prohibiting a person from effecting their death in protection of his or her person or property.⁶

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Footnotes

¹ [Payne & Butler v. Providence Gas Co.](#), 31 R.I. 295, 77 A. 145 (1910).

² [State v. Elson](#), 77 Ohio St. 489, 83 N.E. 904 (1908).

³ [Territory v. Hoy Chong](#), 21 Haw. 39, 1912 WL 1628 (1912).

⁴ [People v. Maikhio](#), 51 Cal. 4th 1074, 126 Cal. Rptr. 3d 74, 253 P.3d 247 (2011).

⁵ [Marich v. Pennsylvania Game Com'n](#), 676 A.2d 1325 (Pa. Commw. Ct. 1996).

⁶ [State v. Burk](#), 114 Wash. 370, 195 P. 16, 21 A.L.R. 193 (1921).

As to taking game in defense of person or property, see § 38.

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III. State and Local Regulation of Hunting and Fishing

C. Scope of State Regulation

2. Particular Regulation

§ 46. Scope of state power to regulate manner of taking fish and game

[Topic Summary](#) [Correlation Table](#) [References](#)

West's Key Number Digest

West's Key Number Digest, **Fish** 8 to 10

West's Key Number Digest, **Game** 3.5 to 5

The regulatory power of the state extends to the manner in which fish or game may be taken.¹ For example, the state may limit the kind of bait, if any, that may be used in fishing,² or restrict the manner of taking fish to prohibit devices used to snag fish.³ It may forbid or restrict the use of nets or seines in particular waters or at particular times, restrict or limit the length of the nets and the size of the meshes, or permit the use of only certain kinds of nets.⁴ Regulations in the manner in which fish may be taken may distinguish commercial and recreational fishing.⁵

Observation:

While the state, and not a town as the owner of underwater lands, has authority to regulate and control the right of fishing for migratory marine fish, such as crabs and conchs, from navigable waters, to extent that the manner in which fishermen's attempts to remove migratory fish from the waters require them to disturb the underwater lands, a town may prohibit them from trespassing by placing fishing gear on those lands.⁶

The possession of a net or seine for uses prohibited by statute may be forbidden and made a criminal offense.⁷

Footnotes

¹ [Toomer v. Witsell](#), 334 U.S. 385, 68 S. Ct. 1156, 92 L. Ed. 1460 (1948).

² [U.S. v. Ardoine](#), 431 F. Supp. 493 (W.D. La. 1977).

³ [Willaby v. State](#), 698 S.W.2d 473 (Tex. App. Fort Worth 1985).

⁴ [Pennisi v. Department of Fish & Game](#), 97 Cal. App. 3d 268, 158 Cal. Rptr. 683 (1st Dist. 1979).

The criminal offenses of leaving an unattended gill net and leaving crab pots in the water for more than five days were strict-liability regulatory offenses. [State v. Waterfield](#), 850 S.E.2d 609 (N.C. Ct. App. 2020).

To establish the commission of simultaneous possession of mullet in excess of the recreational daily bag limit and any gill or other entangling net, the State was required to prove (1) that defendant was in possession of any species of mullet, (2) that the amount of that mullet exceeded the recreational daily bag limit, (3) that defendant also possessed a gill or other entangling net, and (4) that defendant possessed the mullet and net simultaneously. [Sasser v. State](#), 67 So. 3d 1150 (Fla. 2d DCA 2011).

⁵ [Washington Kelpers Ass'n v. State](#), 81 Wash. 2d 410, 502 P.2d 1170 (1972) (abrogated on other grounds by, [Yim v. City of Seattle](#), 194 Wash. 2d 682, 451 P.3d 694 (2019)).

⁶ [Brookhaven Baymen's Ass'n, Inc. v. Town of Southampton](#), 85 A.D.3d 1074, 926 N.Y.S.2d 594 (2d Dep't 2011).

⁷ [Miller v. McLaughlin](#), 281 U.S. 261, 50 S. Ct. 296, 74 L. Ed. 840 (1930).

As to crimes and penalties, see §§ 51 to 55.

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III. State and Local Regulation of Hunting and Fishing

C. Scope of State Regulation

2. Particular Regulation

§ 47. Scope of state power to limit quantity or size of game or fish taken

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West's Key Number Digest

West's Key Number Digest, [Fish](#) 8 to 10

West's Key Number Digest, [Game](#) 3.5 to 5

It is within the power of the legislature to limit the amount of game which a hunter may take within a certain period,¹ or to prohibit fishermen from taking or selling fish smaller than a designated length.² Also, the prohibition against the taking of oysters under a prescribed size may legally extend to the taking of oysters from private beds.³

A state program governing the allocation of lobster and stone crab trap tags, providing for tag reductions in the event of declining stocks and requiring 5,000 in annual sales for restrictive species endorsement was rationally related to legitimate state interests of natural resource protection and regulation of exploitation of the state's natural resources, and thus did not violate the substantive due process rights of commercial fishermen.⁴

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Footnotes

¹ [State v. McCullagh](#), 96 Kan. 786, 153 P. 557, 11 A.L.R. 980 (1915).

² [State v. Millington](#), 377 So. 2d 685 (Fla. 1979); [State v. Whites Landing Fisheries, LLC](#), 2017-Ohio-7537, 96 N.E.3d 1236 (Ohio Ct. App. 6th Dist. Erie County 2017).

³ [Windsor v. State](#), 103 Md. 611, 64 A. 288 (1906).

⁴ [Vickers v. Egbert](#), 359 F. Supp. 2d 1358 (S.D. Fla. 2005).

Works.

35A Am. Jur. 2d Fish, Game, and Wildlife Conservation § 48

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III. State and Local Regulation of Hunting and Fishing

C. Scope of State Regulation

2. Particular Regulation

§ 48. Scope of state power to regulate transportation of fish and game

[Topic Summary](#) [Correlation Table](#) [References](#)

West's Key Number Digest

West's Key Number Digest, **Fish** 8 to 10

West's Key Number Digest, **Game** 3.5 to 5

The state, in the exercise of its power to impose regulations for the protection and preservation of its natural resources, may adopt and enforce statutes forbidding or regulating the transportation of fish and game.¹ Such a statute may be made applicable to a common carrier transporting game killed in the state, and intent on its part may be declared immaterial.²

A state does not lose its right to control and regulate the transportation of game from within its borders because of the passage of an Act by Congress regulating the hunting seasons on migratory birds, since such state legislation is not inconsistent with the congressional act.³

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Footnotes

¹ [Carey v. State of South Dakota](#), 250 U.S. 118, 39 S. Ct. 403, 63 L. Ed. 886 (1919).

² [Wells Fargo Exp. Co. v. State](#), 79 Ark. 349, 96 S.W. 189 (1906).
As to offenses, and defenses against charges thereof, see §§ 51 to 55.

³ [Carey v. State of South Dakota](#), 250 U.S. 118, 39 S. Ct. 403, 63 L. Ed. 886 (1919).

35A Am. Jur. 2d Fish, Game, and Wildlife Conservation § 49

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III. State and Local Regulation of Hunting and Fishing

C. Scope of State Regulation

2. Particular Regulation

§ 49. Scope of state power to regulate possession or sale of fish and game; offering for sale; marking or tagging

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Fish 8 to 10

West's Key Number Digest, Game 3.5 to 5

The state, in the exercise of its power to make regulations for the preservation of game and in order to enforce prohibitions against fishing, may not only prescribe closed seasons during which the taking of fish and game is prohibited, but also forbid the possession of fish and game during the closed season,¹ or the sale, or offering for sale, of fish and game during that time,² even though fish and game may have been lawfully taken or killed in open season.³ The state may also prohibit such specific conduct as the simultaneous possession of mullet in excess of the recreational daily bag limit and any gill or other entangling net.⁴ Regulations of the right to hunt or take game, and restrictions as to the possession or disposal of game after it has been reduced to possession, deprive no person of his or her property.⁵

In some statutes particular reference is made to possession of parts of the carcass and under such statutes the possession of parts of the carcass will ordinarily constitute an offense.⁶ The state also may permit the catching of fish for consumption but forbid their taking for purposes of sale.⁷ Also, similarly, it is within the power of the state to restrict or prohibit at all times the sale of wild game by one having lawful possession of it.⁸ A state can also prohibit the offering for sale of taxidermically processed deer heads, regardless of whether deer were native to the state where the applicable statute expresses an intention to prohibit traffic in out-of-state wildlife as well as wildlife native to the state.⁹

Under a statute proscribing the possession of a deer unlawfully taken, possession does not necessarily mean one's own possession but includes a conspirator's possession.¹⁰

The possession of the carcass of a deer accidentally struck and killed by an automobile is unlawful under a statute penalizing the possession of such a carcass "except as provided in" a statute permitting, under certain restrictions, the hunting of deer with shotgun or bow and arrow, and the killing of deer to prevent damage to crops, fruits, or ornamental trees, or except when lawfully taken or killed outside the state.¹¹

The state, in the exercise of its power to impose regulations affecting hunting and fishing may impose marking or tagging requirements on game and fish reduced to possession,¹² including requirements that proper tagging be maintained on hides in possession.¹³

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Footnotes

¹ [State v. Pulos](#), 64 Or. 92, 129 P. 128 (1913); [State v. Pollock](#), 42 S.D. 360, 175 N.W. 557 (1919).

² [Union Fishermen's Co-operative Packing Co. v. Shoemaker](#), 98 Or. 659, 193 P. 476 (1920).

³ [People v. Clair](#), 221 N.Y. 108, 116 N.E. 868 (1917).

⁴ [Sasser v. State](#), 67 So. 3d 1150 (Fla. 2d DCA 2011).

⁵ [Commonwealth v. Worth](#), 304 Mass. 313, 23 N.E.2d 891, 125 A.L.R. 1196 (1939).

⁶ [Jewell v. Hempleman](#), 210 Wis. 265, 246 N.W. 441 (1933).

⁷ [State v. Dow](#), 70 N.H. 286, 47 A. 734 (1900).

⁸ [People v. Clair](#), 221 N.Y. 108, 116 N.E. 868 (1917); [Graves v. Dunlap](#), 87 Wash. 648, 152 P. 532 (1915).

⁹ [State, Dept. of Environmental Protection and Energy, Div. of Fish, Game and Wildlife v. Santomauro](#), 261 N.J. Super. 339, 618 A.2d 917 (App. Div. 1993).

¹⁰ [State v. Ballou](#), 127 Vt. 1, 238 A.2d 658 (1968).

¹¹ [Commonwealth v. Worth](#), 304 Mass. 313, 23 N.E.2d 891, 125 A.L.R. 1196 (1939).

¹² [Blobner v. Com.](#), 144 Pa. Commw. 100, 600 A.2d 708 (1991); [State v. Sullivan](#), 154 Vt. 437, 578 A.2d 639 (1990).

¹³ [State v. Earl](#), 242 Mont. 279, 790 P.2d 464 (1990).

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III. State and Local Regulation of Hunting and Fishing

- C. Scope of State Regulation
- 2. Particular Regulation

§ 50. Scope of state power to prevent waste in relation to fish and game

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, **Fish** 8 to 10

West's Key Number Digest, **Game** 3.5 to 5

The state, in the exercise of its power to impose regulations affecting hunting and fishing may prohibit wanton waste, in conjunction with regulations criminalizing the transportation of illegally killed game.¹ Statutes which prohibit the waste of food fish or the use, in reduction plants, of fish fit for human consumption, in pursuance of the public policy which aims to protect and conserve food fish for the benefit of present and future generations of the people of the state and the devotion of such fish to the purposes of human consumption, may be a valid exercise of the police power of the state regulating the possession and use of fish.² Such regulatory provisions are not unreasonable or discriminatory.³

A proviso to a statute forbidding the use of food fish for reduction purposes, which permits those engaged in catching or dealing in fish for human consumption, and those engaged in canning or preserving fish for such consumption, to apply for permits to use them in reduction plants, which permits may be granted upon certain conditions, is not unreasonable or discriminatory.⁴

Observation:

A particular state statute, setting forth reimbursable damages for the unlawful killing, possession or waste of wild animals, is written in such a manner that there are two distinct lists of reimbursable damage assessments: one that applies to any illegal killing, possession, or waste of the enumerated animals; and the second that applies to flagrant violations involving the illegal killing, possession, or waste of trophy big game animals.⁵

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Footnotes

¹ [Gudmundson v. State, 822 P.2d 1328 \(Alaska 1991\)](#).

² [People v. Monterey Fish Products Co., 195 Cal. 548, 234 P. 398, 38 A.L.R. 1186 \(1925\)](#).

³ [Bayside Fish Flour Co. v. Gentry, 297 U.S. 422, 56 S. Ct. 513, 80 L. Ed. 772 \(1936\)](#).

⁴ [People v. Monterey Fish Products Co., 195 Cal. 548, 234 P. 398, 38 A.L.R. 1186 \(1925\)](#).

⁵ [State v. Hughes, 161 Idaho 826, 392 P.3d 4 \(Ct. App. 2014\)](#).

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Research References

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A.L.R. Library

A.L.R. Index, Fish and Game

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III. State and Local Regulation of Hunting and Fishing

D. Crimes and Penalties

§ 51. State power to enact criminal laws pertaining to fish and game and to penalize violations, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Fish  13 to 17

West's Key Number Digest, Game  7 to 10

To secure the enforcement of restrictions on the taking of fish and game, the state may make it a criminal offense to do so in violation of its regulations.¹ While even the possession of specified appliances for taking fish or game for unlawful purposes may be declared a crime, as a general rule such penal statutes are to be strictly construed in favor of the accused, and only those acts expressly condemned by the statute are punishable.²

Fish and game laws may be enforced by the imposition of a fine³ or imprisonment.⁴ Statutes which impose a fine or penalty for each individual fish, bird or animal unlawfully taken or found in possession are valid notwithstanding arguments that they impose excessive fines or punishments.⁵ Accordingly, a fine of \$10,000 for the illegal importation of more than 15,000 underweight lobster tails is reasonable where the importer ran his importing business alone, had been in the importing business for years, purchased the tails himself in South Caicos, and was present when they were packed for shipping, because it is reasonable to conclude that the importer knew of the weight requirements and of the likelihood that the tails did not meet the weight requirement for export under Turks and Caicos law.⁶

Under some authority, an order of restitution may also be appropriately imposed against persons convicted of criminal violations of fishing regulations.⁷

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Footnotes

¹ [State v. Reed, 75 S.D. 282, 63 N.W.2d 792 \(1954\)](#).

² [People v. Buffalo Fish Co., 164 N.Y. 93, 58 N.E. 34 \(1900\)](#).

³ [State v. Poole](#), 93 Minn. 148, 100 N.W. 647 (1904); [State v. Waterfield](#), 850 S.E.2d 609 (N.C. Ct. App. 2020); [Villa v. Thayer](#), 92 Vt. 81, 101 A. 1009 (1917).

⁴ [Villa v. Thayer](#), 92 Vt. 81, 101 A. 1009 (1917).

⁵ [In re Schwartz](#), 119 La. 290, 44 So. 20 (1907); [State v. Poole](#), 93 Minn. 148, 100 N.W. 647 (1904) (upholding a fine of \$10 for each illegally possessed duck, imposed upon defendants having 2,000 ducks).

⁶ [U.S. v. Proceeds from Sale of Approximately 15,538 Panulirus Argus Lobster Tails](#), 834 F. Supp. 385 (S.D. Fla. 1993).

⁷ [State /Division of Wildlife v. Coll](#), 2017-Ohio-7270, 96 N.E.3d 947 (Ohio Ct. App. 6th Dist. Sandusky County 2017).

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III. State and Local Regulation of Hunting and Fishing

D. Crimes and Penalties

§ 52. Intent under state criminal laws pertaining to fish and game; strict liability

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Fish  13 to 17

West's Key Number Digest, Game  7 to 10

Conviction for some statutes enforcing hunting and fishing regulations may require a mens rea intent or criminalize negligent violations.¹ However, intent is usually not an element necessary to prove to show a conviction for a violation of hunting or fishing offenses, unless made so by the statute, and the legislature may make the possession of certain fish or game in closed season a criminal offense, irrespective of the intent of the possessor.² For example, regulations prohibiting taking of resources from a state marine conservation area and requiring traps to contain destruction devices are public welfare offenses to which strict liability applies, where both provisions were passed to promote the health and well-being of the state's living marine resources, misdemeanor penalties are imposed for violations, and it would be difficult for the prosecution to prove that a defendant intended to place traps in a state marine conservation area and/or without operable destruction devices, rather than having done so inadvertently.³ In addition, possession of illegal fishtraps is a strict-liability offense, in light of the fact that no mental state for culpability is required.⁴ Also, the offenses of wrongfully possessing a state resident hunting license and of killing elk without having a proper class license have been held not to require proof of specific criminal intent,⁵ and a misdemeanor offense of hunting on posted land without permission which contains no culpability requirement is therefore a strict-liability offense.⁶

Observation:

Since scienter or guilty knowledge was not an element of the charged offense concerning illegal taking of walleye by commercial means, the holder of a commercial seining permit could be held strictly liable for any walleye illegally taken by his crew, regardless of whether he knew of their actions.⁷

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Footnotes

¹ [Waiste v. State](#), 808 P.2d 286 (Alaska Ct. App. 1991) (intent was element of using drift gill net while not drifting, even though statute criminalizes negligent violation of regulation). In a statute providing for revocation of authorization to catch oysters if a person has “knowingly committed” a violation of oyster harvesting regulations, the term “knowingly” means deliberately or intentionally, and does not require proof that the licensee is subjectively aware that his or her act is unlawful. [Hayden v. Maryland Department of Natural Resources](#), 242 Md. App. 505, 215 A.3d 827 (2019).

² [U.S. v. Catlett](#), 747 F.2d 1102 (6th Cir. 1984) (scienter is not required for conviction for taking migratory birds on or over baited field); [Cummings v. Com.](#), 255 S.W.2d 997 (Ky. 1953).

³ [People v. Wetle](#), 43 Cal. App. 5th 375, 256 Cal. Rptr. 3d 646 (6th Dist. 2019).

⁴ [State v. Taylor](#), 580 So. 2d 1102 (La. Ct. App. 4th Cir. 1991) (criminal intent is not element of offense of unlawfully taking oysters from state water bottoms); [State v. Seamen's Club](#), 1997 ME 70, 691 A.2d 1248 (Me. 1997) (crime of possession of short lobsters does not require culpable mental state); [State v. Brandner](#), 551 N.W.2d 284 (N.D. 1996).

⁵ [State v. Wimer](#), 118 Idaho 732, 800 P.2d 128 (Ct. App. 1990).

⁶ [State v. Brandborg](#), 2014 ND 228, 857 N.W.2d 83 (N.D. 2014).

⁷ [Koch v. Ohio Dept. of Natural Resources](#), 95 Ohio App. 3d 193, 642 N.E.2d 27 (10th Dist. Franklin County 1994).

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III. State and Local Regulation of Hunting and Fishing

D. Crimes and Penalties

§ 53. Defenses under state criminal laws pertaining to fish and game

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Fish  13 to 17

West's Key Number Digest, Game  7 to 10

When a particular violation of the fish and game laws is a strict-liability offense, defendant will not be permitted to present evidence on a defense such as depredation.¹ Otherwise, however, the defense of taking game in defense of a person or property may be available.² Also, a necessity defense may be available as a defense to the killing of an injured game animal out of season, on the theory that the animal was already wounded and that the killing was necessary to prevent any further suffering. However, such a claim would not be available as a defense to a charge of controlling or possessing that animal, after it was killed, outside of the hunting season.³ Accordingly, a defendant, who was charged with the misdemeanor possession of an unlawfully taken bobcat pelt, was not entitled to submit to the jury the issue as to whether the bobcat was taken by him in defense of his son whom the bobcat was allegedly attacking where the defendant had possessed the bobcat pelt for more than 72 hours without having reported acquiring the pelt as required.⁴

Generally, it is no defense that the person did not know their conduct was unlawful.⁵ The defense of legal impossibility will not preclude the conviction of a defendant, who shoots a deer decoy, of attempting to take wild deer out of season.⁶ In citations for taking deer during closed season and wasting game, the state is not required to negate the possible defense that the defendant is a Native American.⁷

Where the right of nonresidents to shoot or fish in the state can exist only as an incident to their ownership of land therein on which they hunt or fish, a deed granting them only the right to hunt and fish, and this to revert upon abandonment, gives no defense against the game law.⁸ The fact that a person convicted of fishing without a license is employed by one properly licensed is no defense to such a prosecution.⁹

While entrapment or outrageous government conduct may constitute a defense, where a defendant fails to establish that the government's conduct was outrageous in connection with an officer's hunting, taking, and wasting game as part of an undercover operation, and there was no evidence that the state engineered a criminal enterprise in which defendant was involved or generated crimes merely for the sake of prosecuting defendant, such a defense will fail.¹⁰

A “first in time, first in right” defense may be available in response to criminal charges for violating the minimum distance between units of fishing gear, even though it is a strict-liability offense.¹¹

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Footnotes

¹ [State v. Kleppe](#), 2011 ND 141, 800 N.W.2d 311 (N.D. 2011).

² [§ 38](#).

³ [State v. Bailey](#), 77 Wash. App. 732, 893 P.2d 681 (Div. 3 1995), as amended on denial of reconsideration, (June 28, 1995).

⁴ [State v. Gibbs](#), 244 Mont. 251, 797 P.2d 928 (1990).

⁵ [Scudero v. State](#), 917 P.2d 683 (Alaska Ct. App. 1996).

Because a person is on notice that they are subject to the rules of the Department of Fish, Wildlife, and Parks related to the management of wildlife, it is no defense that they were ignorant of those rules or the law, or that they relied on statements from an adjoining property owner. [State v. McGregor](#), 2017 MT 156, 388 Mont. 63, 398 P.3d 241 (2017).

⁶ [State v. Curtis](#), 157 Vt. 629, 603 A.2d 356 (1991).

⁷ [State v. Herrera](#), 152 Or. App. 22, 952 P.2d 566 (1998).

⁸ [Kenner v. State](#), 121 Ark. 95, 180 S.W. 492 (1915).

⁹ [State v. Catholic](#), 75 Or. 367, 147 P. 372 (1915).

¹⁰ [State v. Romero](#), 279 Mont. 58, 926 P.2d 717 (1996).

¹¹ [Clucas v. State](#), 815 P.2d 384 (Alaska Ct. App. 1991).

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III. State and Local Regulation of Hunting and Fishing

D. Crimes and Penalties

§ 54. Prosecutions under state criminal laws pertaining to fish and game, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Fish  13 to 17

West's Key Number Digest, Game  7 to 10

Where a culpable mental state is a required element of the offense, a complaint must allege the culpable mental state.¹ However, a jury instruction as to mens rea may not be warranted where the court's instructions adequately and correctly convey the elements of the crime to the jury, and the requirement that the defendant must have acted knowingly is apparent from the plain language of the statute.²

The burden of proof in prosecutions for violations of fish laws, and the evidence admissible to establish that burden and to meet the case made by the proof introduced by the state in the discharge of the burden upon it, are governed by the general principles of the law of evidence as applied in criminal prosecutions.³ Thus, a conviction for fishing without a license cannot be sustained by circumstantial evidence consisting of the presence of the defendant as a guest passenger in an automobile returning with fish and fishing apparatus from the scene of the fishing, where it appeared from the evidence of the state that five unidentified persons were engaged in the fishing, that four of the seven persons in the car had fishing licenses, and that the condition of the defendant's clothes indicated that he was not the fifth fisherman.⁴ Also, the evidence was insufficient to support defendant's convictions for prevention of hunting by creating noise and possession of criminal tools, where the explanation of circumstances underlying the trial court's guilty findings consisted of the prosecutor reading a brief summary of the police report and answers to the trial court's questions regarding the properties at issue and whether defendant was lawfully at the property in question at the time of the incident, and nothing in the explanation of the circumstances indicated that defendant knew another person was attempting to hunt when she was making noise with maracas or that she was using the maracas to affect the behavior of the wild animal being hunted.⁵

As in any criminal prosecution, expert witnesses in a prosecution under the fish and game laws must be qualified regarding the subject matter of their testimony.⁶ Also, the jury is free to reject defendant's testimony offering a noncriminal explanation for his or her behavior.⁷

The state may adopt a *prima facie* standard as evidence of the offense without depriving the defendants of their right to a presumption of innocence where the standard has a reasonable relationship between the acts giving rise to the *prima facie*

evidence and the main fact to be proved.⁸ Accordingly, the flashing or display of any artificial light from a roadway or public or private driveway in any locality or area frequented or inhabited by wild deer, accompanied by the possession of a firearm or bow and arrow during the hours between sunset and sunrise would constitute *prima facie* evidence of a violation of the night hunting statute.⁹ Also, possession of guns and a light during statutorily specified hours in an area where deer might be found and in a manner capable of disclosing the presence of the deer was *prima facie* evidence of an intent to violate the statute proscribing the illegal taking and possession of deer and wild turkeys during such hours.¹⁰

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Footnotes

¹ [Vinson v. State, 626 S.W.2d 536 \(Tex. Crim. App. 1981\)](#).

As to mental state requirements in hunting and fishing offenses, generally, see [§ 52](#).

² [State v. Siracusa, 2017 ME 84, 160 A.3d 531 \(Me. 2017\)](#) (the fact that a person had to know that he was taking part in a deer drive to be guilty of that offense was apparent from the plain language of the statute, which required the State to prove that a person had participated in a planned or organized event).

³ [State v. Bates, 76 S.D. 23, 71 N.W.2d 641 \(1955\)](#) (abrogated on other grounds by, [State v. Plastow, 2015 SD 100, 873 N.W.2d 222 \(S.D. 2015\)](#)).

⁴ [Washburn v. State, 90 Okla. Crim. 306, 213 P.2d 870, 15 A.L.R.2d 751 \(1950\)](#).

⁵ [City of Seven Hills v. McKernan, 2019-Ohio-1001, 124 N.E.3d 898 \(Ohio Ct. App. 8th Dist. Cuyahoga County 2019\)](#).

⁶ [State v. Whites Landing Fisheries, LLC, 2017-Ohio-7537, 96 N.E.3d 1236 \(Ohio Ct. App. 6th Dist. Erie County 2017\)](#).

⁷ [State v. Siracusa, 2017 ME 84, 160 A.3d 531 \(Me. 2017\)](#).

⁸ [State v. Lassiter, 13 N.C. App. 292, 185 S.E.2d 478 \(1971\)](#).

⁹ [State v. Lassiter, 13 N.C. App. 292, 185 S.E.2d 478 \(1971\)](#).

¹⁰ [Williams v. State, 239 So. 2d 583 \(Fla. 1970\)](#).

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III. State and Local Regulation of Hunting and Fishing

D. Crimes and Penalties

§ 55. Forfeitures and seizures under state criminal laws pertaining to fish and game

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Fish  13 to 17

West's Key Number Digest, Game  7 to 10

The state has the power to punish a violation of its fish and game laws by the forfeiture of the apparatus used in the illegal taking of such fish and game¹ as well as forfeiture of the illegal game or fish, or the proceeds obtained therefrom.² Among equipment that is subject to forfeiture are boats used in taking fish or marine organisms illegally,³ as well as such items as an automobile and boat trailer used in illegal shocking of fish,⁴ and the gun and truck used in illegal night hunting.⁵

Some violations of fishing laws may impose forfeiture as an appropriate remedy without imposing criminal liability.⁶

An innocent owner exception exists under forfeiture statutes for illegal hunting and fishing, although to establish the innocent owner exception to a statute providing for the forfeiture of contraband wildlife and devices, a claimant must establish either the lack of knowledge or the lack of consent.⁷ Generally, forfeiture proceedings under a game code are in rem proceedings, rather than in personam. Such proceedings must comport with due process of law,⁸ and the owner of the property subject to forfeiture proceedings is entitled to notice of the initiation of a forfeiture proceeding and to an evidentiary hearing on the forfeiture separate from the criminal hearing.⁹ However, some states may allow forfeiture proceedings in conjunction with criminal charges without requiring a separate in rem proceeding.¹⁰

Where the defendant has committed a strict-liability offense, the trial court may not, in ordering a forfeiture, properly consider that defendant has expressed no remorse for his or her unlawful conduct.¹¹

The conviction of an individual offender of violation of the fishing laws is not a prerequisite to the maintenance of a forfeiture of the apparatus used in illegal fishing.¹² In the absence of a statute empowering the game warden to destroy the property which is being used illegally to capture or kill game, the game warden is liable for the destruction of such property, although it is the only effective means he or she has for protecting game.¹³

Footnotes

¹ State v. Thompson, 204 So. 3d 1019 (La. Ct. App. 4th Cir. 2016); State v. Fishing Vessel, Flying Yankee, 589 A.2d 461 (Me. 1991); State v. Foley, 125 Or. App. 423, 865 P.2d 465 (1993); State v. Cunningham, 995 S.W.2d 638 (Tenn. Crim. App. 1999); State v. Yates, 834 P.2d 599 (Utah Ct. App. 1992).

² McNabb v. State, 860 P.2d 1294 (Alaska Ct. App. 1993), as amended on reh'g in part, (Nov. 26, 1993); People v. Estes, 218 Cal. App. 4th Supp. 14, 161 Cal. Rptr. 3d 690 (App. Dep't Super. Ct. 2013); State v. Wingate, 668 So. 2d 1324 (La. Ct. App. 1st Cir. 1996), writ denied, 672 So. 2d 924 (La. 1996); Risner v. Ohio Dept. of Natural Resources, Ohio Div. of Wildlife, 144 Ohio St. 3d 278, 2015-Ohio-3731, 42 N.E.3d 718 (2015); State v. Kelly, 123 Or. App. 528, 860 P.2d 843 (1993).

³ State v. Thompson, 204 So. 3d 1019 (La. Ct. App. 4th Cir. 2016); State v. Fishing Vessel, Flying Yankee, 589 A.2d 461 (Me. 1991).

⁴ One 1992 Toyota 4-Runner, Vin No. JT3VN39W2N8034941 v. State ex rel. Mississippi Dept. of Wildlife Fisheries and Parks, 721 So. 2d 609 (Miss. 1998).

⁵ Crow v. State, 56 Ark. App. 100, 938 S.W.2d 874 (1997).

⁶ State v. Ahrling, 191 Wis. 2d 398, 528 N.W.2d 431 (1995) (commercial clamming without license or permit is merely subject to forfeiture, and is not felony offense).

⁷ Threlkeld v. State ex rel. Mississippi Dept. of Wildlife Fisheries and Parks, 586 So. 2d 756 (Miss. 1991).

⁸ State v. Billiot, 254 La. 988, 229 So. 2d 72 (1969).

⁹ Reeves v. Pennsylvania Game Com'n, 136 Pa. Commw. 667, 584 A.2d 1062 (1990).

¹⁰ Crow v. State, 56 Ark. App. 100, 938 S.W.2d 874 (1997).

¹¹ People v. Estes, 218 Cal. App. 4th Supp. 14, 161 Cal. Rptr. 3d 690 (App. Dep't Super. Ct. 2013).

¹² Department of Wild Life & Fisheries v. The Trawler Baltimore No. 218839, 213 La. 956, 36 So. 2d 1, 3 A.L.R.2d 733 (1948).

¹³ Villa v. Thayer, 92 Vt. 81, 101 A. 1009 (1917).